

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

Application by SBC Communications Inc.
For Authorization To Provide In-Region,
InterLATA Services In The States of
Illinois, Indiana, Ohio, and Wisconsin

WC Docket No. 03-167

MOTION TO ACCEPT COMMENTS INSTANTER

NOW COMES Northern Telephone and Data Corporation by its attorneys, Peter L. Gardon and Stephen J. Liccione of Reinhart Boerner Van Deuren s.c., and moves this Commission to accept and file its comments instanter.

On August 7, 2003 Northern Telephone and Data Corp. electronically submitted its comments in the above captioned docket to this Commission. It then electronically provided courtesy copies of same to selected members of this Commission's staff and selected staff members of the Wisconsin Public Service Commission, the Illinois Commerce Commission, the Public Utility Commission of Ohio and the Indiana Regulatory Commission. For unknown reasons, the electronically submitted comments to this Commission were not received; however, the courtesy copies to staff members of state and federal regulatory commissions were successfully transmitted.

FCC staff member, Pam Arluk, who received a courtesy copy of Northern Telephone and Data Corp.'s comments in this docket, has forwarded these comments to SBC Communications Inc. No changes have been made to the attached comments since Northern Telephone and Data electronically submitted

them to this Commission and sent courtesy copies to staff at 4:00 p.m. CDT on Thursday, August 7, 2003. Therefore, no party will be prejudiced by the acceptance and filing of Northern Telephone and Data's comments instanter.

Wherefore Northern Telephone and Data Corp asks this Commission to accept and file the attached comments instanter.

Dated this 12th day of August, 2003.

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**COMMENTS OF NORTHERN TELEPHONE AND DATA
CORPORATION**

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INTRODUCTION

Pursuant to the Public Notice dated July 17, 2003, Northern Telephone and Data Corporation ("NTD") submits the following comments regarding SBC's request for 271 authority in Wisconsin.

NTD is a small competitive local exchange carrier headquartered in Oshkosh, Wisconsin. NTD has been providing telecommunications services in Wisconsin for over nine years. During this time NTD has purchased unbundled network elements ("UNEs"), unbundled network element platform ("UNE-P") services, and resale services from SBC. Based upon NTD's experience, SBC does not provide nondiscriminatory access to billing systems and services to NTD. Accordingly, NTD believes that SBC has not satisfied the requirements to obtain 271 authority, and requests that the FCC deny SBC's application for 271 authority for the state of Wisconsin.

DISCUSSION

The ability of NTD and other interested parties to provide local telecommunications services to Wisconsin customers and to compete effectively with SBC in Wisconsin is dependent upon the provision and maintenance by SBC of an efficiently-functioning OSS, which allows CLECs to order and use UNEs, UNE-P and resale services in competition with SBC. As the FCC emphasized in rejecting an application by SBC Michigan for authority to provide in-region, inter-LATA telecommunications services under Section 271, “new entrants must have access to the functions performed by the systems, databases and personnel, commonly referred to as operations support systems, that are used by the incumbent LEC to support telecommunications services and unbundled elements,” and nondiscriminatory access to OSS is “critically important to the development of effective, sustained competition in the local exchange market.” *See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, FCC 97-298 (August 19, 1997) (“*SBC Michigan Order*”), ¶¶ 129, 130.

The provision of timely, accurate and reliable wholesale bills is a crucial component of a fully-functioning OSS. The FCC has recognized that an incumbent local exchange carrier seeking Section 271 authority “must demonstrate that it can produce a readable, auditable, and accurate wholesale bill

in order to satisfy its nondiscrimination requirements under checklist item 2.”¹

The FCC stated that CLECs need readable, accurate and auditable wholesale bills for a number of reasons:

First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC. Accurate and timely wholesale bills in both retail and BOS BDT formats thus represent a crucial component of OSS.²

SBC has not produced accurate and reliable wholesale bills to NTD in Wisconsin. NTD and other CLECs in Wisconsin have experienced significant problems with SBC’s wholesale billing, which are pervasive in scope and severe in effect. The CLECs have detailed numerous instances of erroneous wholesale billing by SBC, including the failure to bill for or under-billing of products or services for extended periods, followed by the submission of substantial back bills; billing for services or products not provided, or that NTD is not to be billed for under the parties’ interconnection agreement; double-billing; application of

¹*Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania* (Sept. 19, 2001) (“*Verizon Pennsylvania Order*”), ¶ 22.

²*Id.*, ¶ 23 (citations omitted).

incorrect rates; failure to implement price changes on a timely basis; improper application of payments; and failure to provide source or back-up data to support billing adjustments.

SBC's billing practices are anti-competitive and have damaged NTD's ability to compete in the Wisconsin marketplace. SBC's systemic billing problems have been used by SBC to justify disconnecting NTD services, placing NTD on credit hold and suspending order processing, all of which greatly damaged NTD's ability to provide service to its customers. For example, on March 5, 2003, SBC disconnected NTD's nine largest customers without warning, without notice, without cause and in violation of the parties' Interconnection Agreement. NTD's customers were without telephone service, including 911 service. NTD immediately contacted SBC officials, but SBC did not restore service to NTD's customers for several hours. SBC's actions directly injured NTD's business by striking at NTD's nine most lucrative accounts. SBC then exacerbated the injury to NTD by soliciting these customers and stating falsely that NTD was in financial difficulty and that the disconnect was due to NTD's financial situation.

The concerns expressed by NTD and other CLECs in Wisconsin regarding SBC's wholesale billing practices have caused the Wisconsin Public Service Commission ("Wisconsin Commission") to open an investigation of SBC's wholesale billing practices, *Investigation into the Wholesale Billing Practices of Wisconsin Bell, Inc., d/b/a SBC Wisconsin*, Docket No. 6720-TI-183. In commencing this proceeding, the Wisconsin Commission stated:

During SBC Wisconsin's checklist proceeding, certain billing issues were alleged by competitive local exchange carriers (CLECs). This proceeding will investigate those allegations in depth and develop solutions to any identified problems, using an evidentiary hearing if necessary.

Specifically, this investigation will conduct a comprehensive root cause analysis of alleged billing issues, especially those identified by CLECs in comments filed in docket 6720-TI-170; develop corrective action items if necessary; target completion dates; and assess the adequacy of billing-related performance measures.

A copy of the Wisconsin Commission's Notice of Proceeding is included as Exhibit 1. A summary of the compilation of the preliminary, initial wholesale billing issues identified by CLECs in the billing proceeding is included as Exhibit 2.

The frequency and variety of billing errors and problems experienced by NTD and other CLECs in Wisconsin, as well as the fact that these problems emanate from deficiencies throughout SBC's OSS, demonstrate that SBC's inability to consistently issue accurate bills, without the need for frequent error corrections and back-billings, is systemic. Whether the problems lie with SBC's actual billing systems or with other aspects of SBC's OSS, SBC is unable to consistently produce timely, accurate, reliable and auditable wholesale bills. If SBC cannot consistently and reliably issue accurate bills to its wholesale customers, without the need for frequent error correction and issuance of large back bills covering extended periods of time, then SBC is not providing adequate,

nondiscriminatory access to this component of its OSS in a manner that will support sustained competitive activity in its local service markets and meet its obligations and the preconditions for Section 271 authority.

From NTD's perspective, it does not matter what SBC OSS problem is the cause of a billing error or results in a back bill. The impact on NTD is the same regardless of the underlying root cause. To a certain extent, it probably is worse that the billing problems NTD is experiencing have their genesis in numerous systems throughout the SBC organization, rather than in just SBC's billing systems. Moreover, this unending series of billing errors, each purportedly with a different cause, is precisely the sort of "death by a thousand cuts" inflicted by SBC's OSS that has adversely affected the development of telecommunications competition in Wisconsin.

NTD's real-world experience demonstrates that SBC's wholesale bills have a high frequency of inaccuracy. Not only do SBC's wholesale bills consistently contain errors that must be corrected, but SBC has issued a number of significant back-billings to NTD, covering lengthy prior periods of service. It is of no value that SBC sends NTD bills on or before the scheduled issuance date, if that bill is incomplete or inaccurate, *particularly* if months later SBC back bills NTD for charges that were omitted from, or inaccurately calculated on the bill. Put simply, inaccurate bills are not timely, regardless of when they are issued.

The persistent recurrence of large back bills from SBC is devastating for NTD. The issuance of large back-bills covering lengthy prior periods of service is

indicative that SBC is not proactively monitoring its wholesale bills, and lacks an adequate validation process to insure the accuracy of the bills it issues. If SBC's systems and processes were reliable and produced "accurate" wholesale bills, there would be no need for frequent back billings because wholesale bills would be correct when first issued. Further, if SBC had a competent process for reviewing and auditing its own bills, then any errors would not go undetected for a year or more before SBC discovered the error and issued a back-bill, as has occurred on numerous occasions.

Where wholesale charges from SBC can be billed by NTD directly to its retail customers, the receipt of an inaccurate bill from SBC followed many months later by a back-bill for additional charges means any opportunity to recover the wholesale charges from NTD's retail customers is lost – either as a matter of customer relations in a competitive marketplace, or because some of the end users who were customers of NTD during the period in question are no longer its customers. Even where the back-billed amounts are charges that would not have been billed directly to NTD's retail customers, the receipt of large back bills many months after the fact results in a mismatch of revenues and related costs for NTD across accounting and reporting periods, and wreaks havoc with financial plans and budgets, all as previously recognized by the FCC.

To compound the problem, SBC typically provides no source data to justify the claimed additional charges when it issues back bills. Without such source information it is impossible for NTD to audit and verify the back-billed charges on

SBC's invoice. Acquiring the necessary back-up information from SBC so that the back-billed charges can be audited and verified, or disputed, is a cumbersome and time-consuming process. In effect, SBC places the burden on NTD to determine the basis for the back billing and dispute it if necessary, rather than explaining and justifying its back billings when submitted.

The need to deal with the frequent errors that emanate from SBC's wholesale billing function imposes a significant cost and resource burden on NTD. NTD must expend considerable resources to review and audit SBC's incorrect wholesale bills and dispute questionable or erroneous charges. For example, in response to the repeated wholesale billing errors it has encountered – and the resultant loss of confidence in the reliability of SBC's wholesale bills that this experience has engendered – NTD has been forced to hire an employee dedicated to reviewing SBC bills and disputing billing inaccuracies and improper charges. Reviewing and disputing SBC's billing errors imposes a significant administrative burden on NTD, and requires it to commit an unreasonable level of resources to reviewing the accuracy of the bills it receives from SBC.

SBC's claims dispute process also is entirely unacceptable. NTD has many claims that have taken over six (6) months to process and resolve. NTD has been required to submit over 200 claims in the last year alone. SBC's policy seems to be to deny the claims without researching them because, in some instances, claims have been denied and later granted. Moreover, NTD has examples of SBC issuing credits and then taking them away on different billings. This inefficient process is

extremely time consuming and expensive, and ties up significant amounts of NTD's resources and capital.

CONCLUSION

The amount of time that NTD and other CLECs must spend monitoring SBC's bills and disputing them is excessive and time consuming, and negatively impacts NTD's ability to compete with SBC. The drain on NTD's resources from having to deal with SBC's billing problems gives SBC a competitive advantage. Because of the problems with SBC's wholesale billing systems, SBC should not receive Section 271 authority from the FCC until SBC's wholesale billing problems have been remedied and SBC has demonstrated that it provides accurate – the first time – and timely wholesale bills to its CLEC customers on a consistent and reliable basis.

NTD cannot abide a perfunctory review of SBC's checklist compliance because such compliance is a direct and crucial link to the development of local exchange competition in Wisconsin. Only through the implementation of the 271 requirements, can the Commission ensure that the mandates of the 1996 Act are met and that competition and choice in Wisconsin will succeed.

August 6, 2003

Respectfully Submitted,

/s/ William K. Miller

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CERTIFICATE OF SERVICE

Pursuant to the Public Notice dated July 17, 2003, a courtesy copy of NTD's Comments in WC Docket No. 03-167 have been e-mailed to the following:

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